

Financial Elder Abuse – Civil, Criminal and Non-Litigation Strategies to Help Elders Facing Financial Exploitation

Live Webcast

July 16, 2021

9:00 am – 3:40 pm (Pacific Time)

11:00 am – 5:40 pm (Central Time)

12:00 pm – 6:40 pm (Eastern Time)

Why You Should Attend

Financial exploitation is a growing issue faced by older adults, and the effects of financial exploitation can negatively impact the physical health, mental well-being, and financial stability of victims. While acts of elder abuse may fall under various criminal statutes, civil attorneys are uniquely positioned to deploy legal strategies and advocacy to mitigate the effects of abuse and help older adults attain the remedies they seek.

This training will provide information and resources to help attorneys as they represent clients who may have experienced financial exploitation.

What You Will Learn

- Scope and victims of financial exploitation.
- Strategies for screening and interviewing clients who have been financially exploited.
- The interplay between physical and cognitive changes during aging and how these changes impact financial decision-making.
- Resources required and challenges to filing civil claims of undue influence.
- How to analyze elder financial exploitation cases from start to finish.
- Strategies in determining the best civil remedies for financial exploitation.
- The civil and criminal remedies available for financial elder abuse.
- The legal definition of coerced debt and how to apply consumer law remedies to these cases.
- How elder financial exploitation cases compare to financial abuse in domestic violence cases.
- Who are fiduciaries and what remedies are available in cases of financial abuse by a fiduciary.
- The non-litigation remedies available for victims of financial elder exploitation.
- The meaning of restorative justice in the elder abuse context and pilot programs exploring dispute resolution and restorative justice.

Who Should Attend

Practitioners who work with older adults and caregivers and are seeking a better understanding of financial exploitation and how to assist victims of financial elder abuse. The training will explore emerging issues and trends in financial exploitation, and provide useful information for practitioners who are new to aging and elder law issues, as well as practitioners with elder law experience who are looking to deepen their understanding of financial elder abuse remedies.

AGENDA

Morning Session:

9:00 AM – 12:30 PM (ALL TIMES LISTED IN PACIFIC TIME)

9:00

Opening Remarks

Dani Kaiserman

9:10

Elder Financial Decision Making and Undue Influence

Older adults are often faced with important decisions in financial and health matters, and these decisions have significant consequences on independence and wellbeing in old age. Research strives to understand why some older adults may make less optimal choices by taking a neuroeconomics approach and considering cognition function. Questions of whether an elder has capacity often play an important role in cases involving financial exploitation.

The session will explore these cognitive changes and how they affect the potential for undue influence. In California, “Undue influence” is defined as excessive persuasion that causes another person to act or refrain from acting by overcoming that person’s free will and results in inequity. A typical undue influence case involves a person with a close or fiduciary relationship taking advantage of an elder or dependent adult leading to an unfair result. Lawyers can make a significant difference to clients who are vulnerable to or who may be experiencing undue influence by recognizing it, mitigating it, and remedying it. This session will explain the nuts and bolts, challenges and rewards, of litigating an undue influence case.

Ingrid M. Evans, Dr. Duke Han, PhD, ABPP-CN

10:10 Break

10:20

How to Analyze a Financial Elder Abuse Case

Financial exploitation has many faces, including theft, ID theft, real estate fraud, theft of public benefits, unauthorized use of credit cards, undue influence, deceptive and unfair business practices, and abusive debt collection practices. Financial exploitation is enormously

costly to victims' health and economic security. These cases can be hard to analyze when the victim calls. What questions do you need to ask? What remedies are available? Does a civil or criminal case make most sense? This session will review best practices for interviewing clients and analyzing elder financial exploitations from start to finish.

Jeanne Canavan, Kimberly Swierenga

11:20 Break

11:30

Coerced Debt and Elder Abuse

Coerced debt is debt that an abusive party, often a family member, has taken out in the elder's name. Common examples include the creation of a fraudulent account using the elder's identity, without the elder's consent, or coercing an elder to co-sign a loan. Coerced debt can be a type of identity theft or a result of force or threats. While coerced debt is often discussed in the context of domestic violence, less attention has been given to the prevalence of coerced debt in cases of elder abuse. This session will give background on the factors leading to coerced debt, and potential consumer law remedies and legislative changes that may apply to these cases.

Carla L. Sanchez-Adams, Odette Williamson

12:30 Lunch

Afternoon Session:

1:30 PM – 3:40 PM (ALL TIMES LISTED IN PACIFIC TIME)

1:30

Elder Financial Abuse by a Fiduciary

Fiduciaries are individuals in a position of trust who owe special duties to the elder. Fiduciaries can include trustees, agents under powers of attorney, attorneys, executors, real estate agents, financial advisors, spouses, and joint account holders. When financial elder exploitation is committed by a fiduciary, specific remedies are available. This session will explore how to investigate abuse by a fiduciary, the remedies available, and legal strategy for litigating these cases.

Robert C. Barton, Sil Vossler

2:30 Break

2:40

**Non-Litigation Remedies for Financial Elder Abuse Cases:
Dispute Resolution and Restorative Justice**

With the majority of elder abuse cases committed by family members, the elder may not want to pursue a criminal case against the abuser. Civil remedies may not be worthwhile in cases where the money is gone and the abuser doesn't own any assets or have steady income. Further, the elder may determine that the burdensome time and efforts of litigation are not worth the potential pay out. In these situations, elders may wish to explore non-litigation remedies, including restorative justice, mediation, or collaborative court dispute resolution programs.

Restorative justice uses facilitated meetings between victims, offenders, and other interested community parties to repair harm. The process emphasizes accountability, and although most existing restorative programs focus on juvenile justice issues, restorative justice has been used successfully in cases of elder abuse. Mediation can resolve disputes in a less formal setting, while emphasizing the elder's wishes throughout the process. This session will explore innovative programs that focus on non-litigation remedies, including a pilot restorative justice program with elder victims and Eldercaring Coordination.

Linda Fieldstone, Mary Helen McNeal, Sarah Reckess

3:40 Adjourn

Faculty:

Chair:

Dani Kaiserman

Staff Attorney
Bet Tzedek Legal Services
Los Angeles, California

Robert C. Barton

Partner
Holland & Knight LLP
Los Angeles, California

Jeanne Canavan

Deputy Chief Assistant District Attorney
DeKalb County District Attorney's Office
Decatur, Georgia

Ingrid M. Evans

Founder and Attorney
Evans Law Firm
San Francisco, California

Linda Fieldstone

Family Conflict Dispute Resolution Specialist
Family Resolutions, LLC
Co-Chair Elder Justice Initiative on Eldercaring Coordination
Miami, Florida

Dr. Duke Han, PhD, ABPP-CN

Director, Neuropsychology Division
Professor of Family Medicine,
Neurology, Psychology, and Gerontology
Keck School of Medicine of USC
Los Angeles, California

Mary Helen McNeal
Professor and Director
Elder and Health Law Clinic
Syracuse University
Syracuse, New York

Sarah Reckess
Director, Upstate Office
Center for Court Innovation
Syracuse, New York

Carla L. Sanchez-Adams
Managing Attorney
Texas RioGrande Legal Aid, Inc.
Austin, Texas

Kimberly Swierenga
Elder Financial Abuse Attorney
SWIERENGA LAW & MEDIATION
San Diego, California

Sil Vossler
Founder and Principal
The Vossler Law Firm
Oakland, California

Odette Williamson
Staff Attorney
National Consumer Law Center
Boston, Massachusetts

Senior Pro Bono Program Attorney: Christina Thompson